



April 12, 2000

Ms. Deanne C. Ayers
Ayers & Ayers
2460 One Main Place
1201 Main Street
Dallas, Texas 75202

OR2000-1434

Dear Ms. Ayers:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 134976.

The City of Balch Springs (the "city") received a request for a court docket for December 2, [1999], a copy of a warrant on named individual, and the number of times "code enforcement has been to" a specific address. You contend that the requested docket is a record of the judiciary and not subject to the act, that other information submitted as Exhibit D is not subject to the request because it was not specifically requested, and that the requested warrant does not exist. You seek to withhold the remaining responsive information under section 552.108 of the Government Code. Finally, you argue that the city need not respond to the part of the request seeking "the number of times Code Enforcement has been to" the specified address because to do so would be unduly burdensome.

First, we agree that court dockets submitted as Exhibit C are not subject to a request under the act to the extent that they are records of the judiciary, i.e. records of the city's municipal court. *See* Gov't Code § 552.002 (public information subject to the act means information collected, assembled, maintained by or for a "governmental body"), § 552.003(1)(B) ("Governmental body" subject to the act does not include the judiciary). We caution, however, that to extent the city maintains such records apart from municipal court records and such municipal court records are public, they must be released. *See* Gov't Code § 552.022(a)(17) (information also contained in public court record must be released unless confidential by law).

We also agree that the information submitted as Exhibit D -- i.e. a December 2, 1999 "Hearing Notice," an October 8, 1999 citation, an October 20, 1999 "complaint," and an October 8, 1999 docket sheet -- were not requested in the request and thus need not be released.

We agree as well that the city is not required under the act to create information not in existence at the time of the request. *See e.g.* Open Records decision Nos. 572 (1990), 452 (1986). Thus, the act does not require the city to produce the requested warrant where such warrant did not exist at the time of the request.

Section 552.108(a)(1) excepts from required public disclosure

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:
 - (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

You advise that the information submitted as Exhibits E and F relates to a pending prosecution. Based on your representations, we conclude that, except as noted below, you may withhold Exhibits E and F under section 552.108(a)(1).

Please note that section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Because you have raised no other applicable exceptions to disclosure, the city must release these types of information in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Also, to the extent Exhibits E and F contain records also found in public court records they must be released. Gov't Code § 552.022(a)(17).

As to the question whether the city is required to respond to the part of the request seeking the number of times Code Enforcement has visited the address in question, you state:

The city does not have a computerized method of precisely determining the answer to the posed question, especially considering that the request is not limited to a time frame or a specific property owner. To the best of the City's knowledge, the documents attached as Exhibit E reflect prior Code Enforcement investigations at said property. It is unduly burdensome and would require hundreds of man hours to physically confirm other Code Enforcement investigations at said property.

A governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 561 (1990). The difficulty of complying with the act does not determine the availability of information. Open Records Decision Nos. 499, 497 (1988). Therefore, while we agree that the city is not required to prepare new information in response to a request, we find no basis in the act for a governmental body's avoiding the requirement of producing information in response to a request because to do so would be "unduly burdensome." Therefore, the city must respond to the request. We note that the act affords mechanisms for a governmental body's seeking to clarify or narrow a request. See Gov't Code § 552.022(b). In some instances, the act also permits charging the requestor for costs associated with producing requested information upon proper notification of the requestor. See Gov't Code ch. 552, subchapter F.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

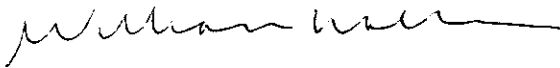
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "William Walker", with a long horizontal flourish extending to the right.

William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 134976

Encl. Submitted documents

cc: Mr. Chris Moses
4318 Linda Lane
Balch Springs, Texas 75180
(w/o enclosures)